

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Communications Assistance for Law)	ET Docket No. 04-295
Enforcement Act and Broadband Access and)	
Services)	RM-10865

COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Telecommunications Industry Association (TIA) respectfully comments in response to the Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceeding.¹

TIA is the leading trade association for the information and communications technology (ICT) industry, with 600 member companies that manufacture or supply the products and services used in global communications across all technology platforms. TIA represents its members on the full range of public policy issues affecting the ICT industry and is fully accredited by the American National Standards Institute (ANSI) to produce industry consensus standards, including ones that provide support for lawfully authorized electronic surveillance. As a result, as both a trade association and a standards development organization (SDO), TIA has played a critical role in industry's ongoing efforts to comply with the requirements of the Communications Assistance for Law Enforcement Act (CALEA).

As it has throughout the course of the Commission's implementation of CALEA, TIA has been actively engaged in the current proceeding, with comment filings at every stage.² Consistent

¹ First Report and Order and Further Notice of Proposed Rulemaking, FCC 05-153 (released Sep. 23, 2005) ("Order" and "FNPRM").

² See Comments of the Telecommunications Industry Association, RM-10865 (Apr. 12, 2004); Reply Comments (Apr. 27, 2004); Comments, ET Docket No. 04-295, RM-10865 (Nov. 8, 2004); Reply Comments (Dec. 21, 2004).

across these filings is a plea for the Commission to continue to recognize that CALEA requires a careful balancing of the needs of law enforcement for effective surveillance capabilities against the risks of over-regulating and imposing unnecessarily broad mandates that stifle innovation, while also protecting the privacy of communications.³

The FNPRM presents yet another instance where this balancing test must be employed. The Commission asks whether the scope of CALEA's applicability should be interpreted to include offerings other than those it identified in the concurrent Order. Despite long acknowledging the need to apply a balanced test based on the limitations set forth in CALEA and to extend it only where a new service is a substitute for a traditional service, the Commission in the FNPRM apparently at least considers reversing course by asking whether there are any types of "managed" VoIP services not covered by the Order that should be subject to CALEA.⁴ TIA believes the answer is a resounding "no."

The Commission in the Order declares as subject to CALEA facilities-based broadband Internet access and VoIP service that is "interconnected" – meaning it "offers the *capability* for users to receive calls from and terminate calls to the PSTN."⁵ The Commission found that using "interconnected" as the touchstone provides an easily identifiable distinction that is consistent with other recent Commission orders addressing the regulatory treatment of IP-enabled services, including VoIP E911 and the *Vonage* decision.⁶

³ See H.R. Rep. No. 103-827, 1994 U.S.C.C.A.N. 3489, 3493 (1994) (CALEA's legislative history).

⁴ FNPRM, ¶ 48.

⁵ Order, ¶ 39 (emphasis original).

⁶ *Id.*, ¶ 40.

Whether or not one believes a publicly available interconnected VoIP or broadband Internet access service today is a substantial replacement for POTS, it is impossible to reach that conclusion for services that are designed for and only offered to a closed group (such as employees) or that are not created primarily to provide interconnection to or from the PSTN, whether the service is “managed” or not. Non-interconnected voice functionality in an IP application does not replace the “legacy POTS service functionality of traditional local telephone exchange service.”⁷ Consumers of such applications do not have an expectation of doing, in the Commission’s words, “everything (or nearly everything) the customer could do using an analog telephone.”⁸ In short, they are not abandoning a service that allows them to reach anyone with a telephone for one that does not. As a result, extending CALEA’s reach to include such applications clearly would exceed the law’s parameters, and the imposition of such inappropriate and burdensome requirements would only serve to harm consumers by holding back the introduction of innovative products.

TIA is concerned that application of CALEA obligations to non-interconnected VoIP or other broadband applications threatens to further undermine the statute’s explicit exemption of equipment, facilities or services that support private networks.⁹ For example, TIA is confident that the law’s clear language and congressional intent do not sweep in internal corporate or government enterprise networks. It has always been clear that CALEA does not apply to closed systems not offered to the public, for example, a corporate or government agency’s PBX system.¹⁰

⁷ *Id.*, ¶ 42.

⁸ *Id.*

⁹ 47 U.S.C. § 1002(b)(2)(B).

¹⁰ Similar to such PBX implementations, most enterprise facilities-based broadband Internet access is restricted to the individuals authorized to use the facilities. Generally the restricted access is achieved through the use of an authentication process and other sophisticated mechanisms.

The U.S. Department of Justice has even recognized that CALEA's scope is limited to services made generally available to the public on an indiscriminate basis.¹¹

Yet the Commission in response to these legitimate concerns creates ambiguity by first confirming that "private networks...are excluded from CALEA requirements,"¹² but then possibly overstepping this limitation of CALEA in a footnote that could be read to extend significantly its impact and breadth. Specifically, buried in the footnote, the Commission says that "to the extent, however, that these private networks are interconnected with a public network, either the PSTN or the Internet, providers of the facilities that support the connection of the private network to a public network are subject to CALEA."¹³ It is unclear what facilities the Commission meant by this but it appears to create uncertainty surrounding a private offering that is not being made generally available to the public, particularly if it is customized; such services were specifically excluded from CALEA.

The Commission in the final paragraph of the FNPRM asks for comment on whether different compliance requirements should apply for different types of providers.¹⁴ Because internal communications functionalities (station-to-station communications, VPNs, WANs, WLANs, Intranets) oftentimes are integrated with or connected to facilities used to support Internet access and external voice capabilities, the private network exemption effectively may be eviscerated by the ambiguous language in the Order discussed just above. TIA therefore believes

¹¹ See Comments of the United States Department of Justice, at 14 (Nov. 8, 2004) ("A wire or electronic communication service that replaces local telephone exchange service and is available to a substantial portion of the public would be a 'substantial' replacement."). DOJ also noted the classic definition of common carriage includes "providing the service to the public indiscriminately." *Id.* at 29.

¹² *Order*, ¶ 36.

¹³ *Id.*, fn. 100.

¹⁴ *FNPRM*, ¶ 52.

that because the law states clearly that communications within and between closed user groups are not subject to CALEA, the Commission in fact would have to create different compliance requirements for such integrated systems in order to effectuate the private network exemption in a broadband environment. In other words, while TIA believes the private network exception applies to these facilities in their entirety, if CALEA's reach is extended at all to providers of closed systems that are not available to the public, but permit employees or other closed groups to also connect to outside networks, any compliance requirements should be very limited.

Conclusion

TIA continues its active support of industry and law enforcement's joint efforts to maintain and update the lawfully authorized electronic surveillance capabilities of communications networks. TIA urges the Commission to remain faithful to CALEA's objectives and limitations as it performs its role in implementing the will of Congress, and to exercise restraint before widely expanding the law's scope.

Respectfully submitted,

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